

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRANDON SHERR,
Plaintiff,
-against-
BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,
Defendant.

Case No. 1:23-cv-08693 (JLR)

MEMORANDUM OPINION
AND ORDER

JENNIFER L. ROCHON, United States District Judge:

On October 3, 2023, Brandon D. Sherr (“Plaintiff”) commenced this overtime-pay action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the “FLSA”), seeking monetary and injunctive relief against the Board of Elections in the City of New York (“Defendant”). ECF No. 1 (the “Complaint”). On December 15, 2023, Defendant moved to dismiss the Complaint. ECF No. 21. The Court entered an amended order of reference on December 19, 2023. ECF No. 24.

On February 10, 2024, Magistrate Judge Aaron issued a Report and Recommendation advising that Defendant’s motion to dismiss the Complaint should be granted. ECF No. 34 (the “Report”) at 1. The Report explained that although Plaintiff had alleged FLSA overtime violations with the requisite specificity, *see id.* at 3-6, Plaintiff’s claims were time-barred by the FLSA’s general two-year statute of limitations, *see id.* at 6-7. The Report noted, however, that a three-year statute of limitations would apply if Defendant’s alleged violations were willful. *See id.* at 6. “[B]ecause Plaintiff may be able to amend his pleading to add facts regarding willfulness, [the Report] recommend[ed] that he be granted leave to amend.” *Id.* at 7. The Report warned, in bold and all-caps font, that failure to timely object would result in a waiver of objections and preclude appellate review. *Id.* at 8.

Ordinarily, a party must file objections to a magistrate judge's recommended disposition within 14 days after the party is served with a copy of the recommended disposition. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Fourteen days after February 10, 2024, was Saturday, February 24, 2024. "When [a time] period is stated in days" and "the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. Civ. P. 6(a)(1)(C). Thus, Plaintiff's objections to the Report were due on Monday, February 26, 2024. That date has now passed, and no objections have been filed to the Report. For the following reasons, the Court adopts the Report in full.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see* Fed. R. Civ. P. 72(b); *Grassia v. Scully*, 892 F.2d 16, 19 (2d Cir. 1989). "In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Trinidad v. 62 Realty, LLC*, No. 22-cv-00101 (JLR), 2023 WL 8005778, at *1 (S.D.N.Y. Nov. 17, 2023) (citation omitted). A party's "failure to object timely to a report waives any further judicial review of the report" so long as the party received "clear notice of the consequences of the failure to object." *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992) (quotation marks and citation omitted).

Here, neither party has submitted objections to the Report. The Court therefore reviews the Report for clear error. *See Trinidad*, 2023 WL 8005778, at *1. The Court finds that the Report's reasoning is sound, grounded in fact and law, and not clearly erroneous. Accordingly, the Court ADOPTS the thorough and well-reasoned Report in its entirety. Defendant's motion to dismiss is GRANTED. The Court grants Plaintiff leave to file an amended complaint within

twenty-one (21) days of this report and recommendation. In light of the clear notice provided in the Report, the lack of any timely objections precludes appellate review of this decision. *See Frank*, 968 F.2d at 300. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 21.

Dated: February 27, 2024
New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge